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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

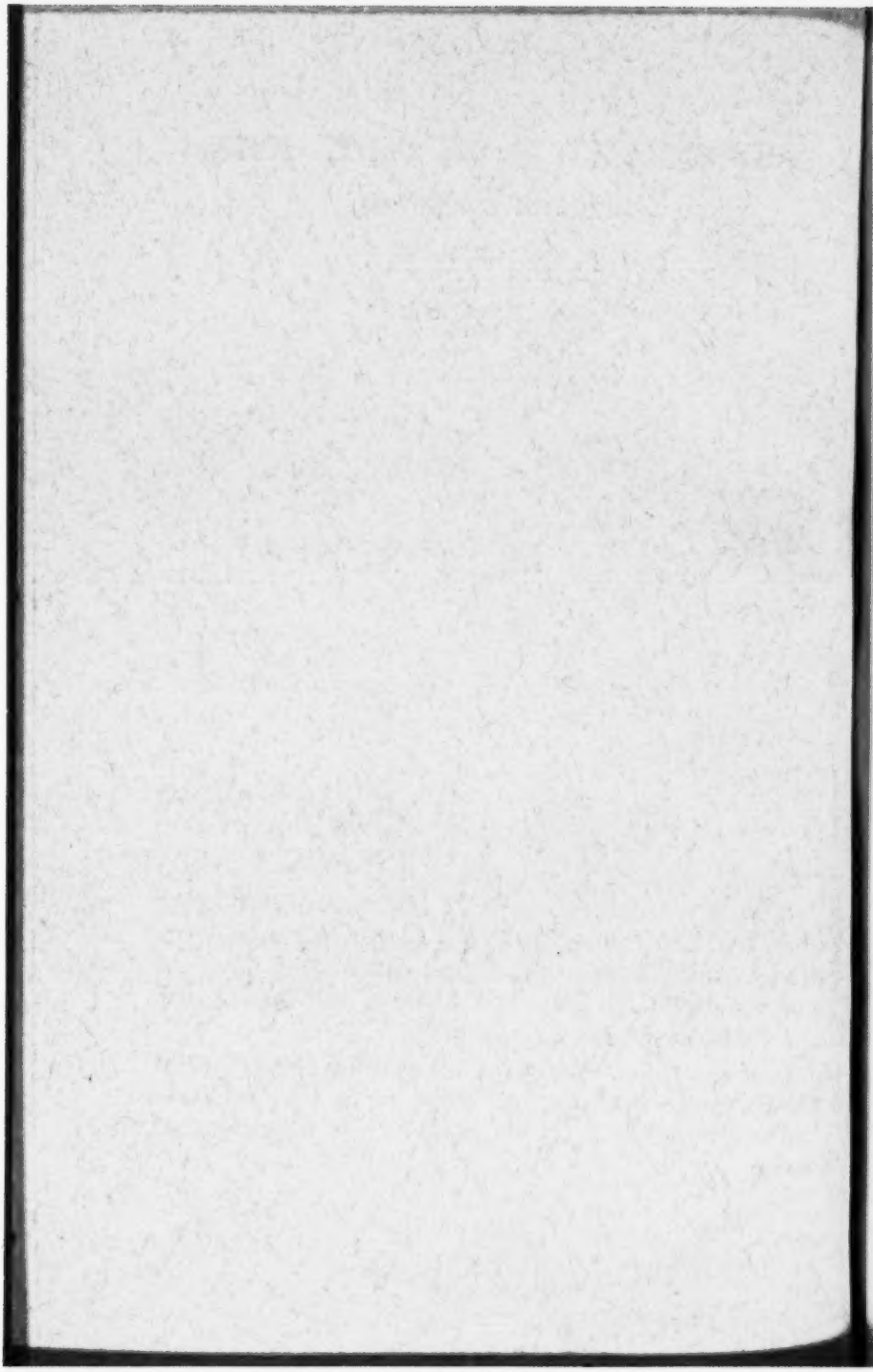
Petitioner,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

J. FRANK HOGUE,
Pro Se.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

Petitioner,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY.

PETITION FOR A WRIT OF CERTIORARI.

Your petitioner, J. Frank Hogue, respectfully represents to the Court the following:

That he is unlawfully imprisoned in the California State Prison at San Quentin, California, and that he is being held illegally and unlawfully, and that he has successively applied by petition for a writ of habeas corpus, in all of the State courts of the State of California, and that in each court his petition has been denied.

Your petitioner states that the petition for a writ of habeas corpus, filed by your petitioner is fully set forth in the Transcript of Record, pages 1 to 16 inclusive, filed herein.

I.

Your petitioner states that on the 26th day of October, 1940, he filed the aforementioned petition for a writ of habeas corpus in the Superior Court of Marin County, State of California, which was presided over by the Honorable Judge Edward Butler, and that said petition was denied by said Court on the 14th day of November, 1940, without giving petitioner a hearing upon the merits of his case.

II.

Your petitioner states that on the 7th day of December, 1940, he filed the same petition for a writ of habeas corpus with the District Court of Appeals, First Appellate District of the State of California and that on the 11th day of December, 1940, said Court denied said petition without giving petitioner a hearing upon the merits of his case and without rendering an opinion.

III.

That on or about the 10th day of March, 1941, your petitioner filed his petition for a writ of habeas corpus with the Supreme Court of the State of California, and that said Court denied said petition on the 17th day of March, 1941, without giving your petitioner a hearing upon his petition, or the merits of his case and that said court did not render an opinion in his case.

IV.

Your petitioner respectfully shows that having exhausted all his legal remedies in the State courts of the State of California, and there being Federal questions involved in his case, and violations of the State and Federal Constitutions, that he filed his petition for a writ of habeas corpus in the United States District Court, for the Northern Dis-

trict of California, on or about the 15th day of April, 1941, the learned Judge A. F. St. Sure, of said Court rendered the following decision upon said petition:

"In the Southern Division of the United States District Court for the Northern District of California

No. 23463-S

In the Matter of J. FRANK HOGUE, On Habeas Corpus.

ORDER DENYING APPLICATION FOR WRIT OF HABEAS CORPUS.

Upon consideration of the petition for writ of habeas corpus filed herein, it appears that said petition should be Denied, and it is So Ordered.

The petitioner is confined at San Quentin under state process. Under such circumstances the law is settled that even where a defendant has exhausted his state remedies the United States District Courts will ordinarily not interfere by habeas corpus, but Will Leave Him to Take His Case Direct to the United States Supreme Court.

Mooney *v.* Holohan, 294 U. S. 103;
Urquhart *v.* Brown, 205 U. S. 179, 181;
Mooney *v.* Holohan, 7 Fed. Supp. 385, 390;
Ex Parte Jefferson, 106 Fed. (2) 471.

Dated: April 19, 1941."

"A. F. ST. SURE,
United States District Judge."

V.

Your petitioner further shows that he then filed notice of appeal from the United States District Court for the Northern District of California to the United States Circuit Court of Appeals for the Ninth Circuit, and that said appeal was allowed and perfected, and that on the 9th day of June, 1941, he filed his appeal in the United States Circuit

Court of Appeals for the Ninth Circuit, and that on the 16th day of January, 1942, said Court handed down the following decision in said case:

"IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 9844

Jan. 16, 1942.

J. FRANK HOGUE,

Appellant,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY,

Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

Before: Garrecht, Haney, and Healy, Circuit Judges

GARRECHT, *Circuit Judge:*

The court below denied Hogue's petition for a writ of habeas corpus and he appeals. The petition alleged that he was in the custody of Duffy, the warden of the California State Prison at San Quentin, California; that he had exhausted the legal remedies afforded by the State of California to secure his release from the penitentiary; that his

imprisonment was violative of the Fifth and Fourteenth Amendments to the Constitution of the United States and, also, that he has been denied the writ of habeas corpus despite the terms of Art. 1, Sec. 9, Cl. 2, of the said Constitution that the statute under which he was convicted provided no maximum term of imprisonment, which term, in this instance, was fixed by the Board of Prison Terms and Paroles of California, in excess of its authority. The petitioner further alleges that he was inducted (in two counts) and pleaded guilty to violation of section 288 of the Penal Code of California; that he was sentenced on May 29, 1935, to imprisonment "for the term prescribed by law," the terms of imprisonment to run concurrently; that on October 8, 1936, one year and three days after entering prison, he was questioned by the California State Board of Prison Terms and Paroles in a meeting at San Quentin and on the following day was notified, in writing, that his term was fixed at twenty years and five years. He contended that the illegality of his restraint consisted of the following:

> "Expiration of lawful sentence and excess punishment in;
>
> "1. That the sentence determined by the Board of Prison Terms and Paroles is a maximum sentence and contrary to the provisions of Section 1168 Penal Code.
>
> "2. That the sentence determined by the Board of Prison Terms and Paroles is ex post facto, it not being provided for in section 1168 Penal Code, nor the judgment and sentence of the court of trial.
>
> "3. That the sentence determined by the Board of Prison Terms and Paroles is a lack of due process of law, is contrary to section 686 Penal Code, and Art. 1, section 13, of the Constitution of California, and amendment 5, sec. 1, and amendment 14, sec. 1, to the Constitution of the United States."

The remainder of the petition was devoted to argument urging issuance of the writ of habeas corpus, and concluded with a prayer therefor.

The court below, in denying the writ, held "THAT EVEN WHERE A DEFENDANT HAS EXHAUSTED HIS STATE REMEDIES, THE UNITED STATES DISTRICT COURTS WILL ORDINARILY NOT INTERFERE BY HABEAS CORPUS, BUT WILL LEAVE HIM TO TAKE HIS CASE DIRECT TO THE UNITED STATES SUPREME COURT."

The Supreme Court of the State of California, the District Court of Appeals and the Superior Courts of the State are empowered to issue writs of habeas corpus in the exercise of their original jurisdiction (Const. Calif., Art. VI, sec. 4, 4b, and 5; 13 Cal. Jur. (par.) 59, p. 284), but if the writ is petitioned for and denied in the lower court, no appeal will lie (*Ex parte Zany*, 164 Cal. 724) and if it is desired to pursue the remedy further, a new application must be made to the higher court (Sec. 1475 Penal Code Calif.; 13 Cal. Jur. (par.) 60, p. 285). The record here discloses that Hogue successively petitioned the Superior Court of the State of California, the District Court of Appeal, and the Supreme Court, and that each, in turn, denied his application for the writ of habeas corpus. Apparently, for it does not appear in the record, no attempt was made by Hogue to secure a review in the Supreme Court of the United States of the order of the State Supreme Court denying his application, but he made the application to the court below, out of which arises this appeal.

In the circumstances, in view of the well settled state of the law in cases such as this, where the state remedies have been exhausted by the applicant, but he has failed to seek review in the Supreme Court of the United States of the action of the highest court of the state, it would be improper for us to discuss the merits of petitioner's case. Directly in point, and authoritative, is *Palmer* v. *McCauley, Warden*, 9 Cir., 103 F. (2d) 300, 301, where we said that "the appropriate way to raise questions involving the validity of a commitment under a state law is by application to the state courts, and if denied by appeal to the Supreme

Court of the United States." See also *Urquhart* v. *Brown*, 205 U. S. 179; *Kramer* v. *State of Nevada*, 9 Cir., 122 F. (2d) 417; *Ex parte Jefferson*, 9 Cir., 106 F. (2d) 471; *Ex parte Penny*, 9 Cir., 103 F. (2d) 27; *Ex parte Melendez*, 9 Cir., 98 F. (2d) 791.

Moreover, it is not apparent that this is one of the "rare cases where exceptional circumstances of peculiar urgency are shown to exist" (*United States ex rel. Kennedy, et al.* v. *Taylor*, 269 U. S. 13, 17), which might possibly justify the issuance of the writ, and we hold there was no abuse of discretion in the denial of it.

Affirmed.

(Endorsed:) Opinion. Filed Jan. 16, 1942. Paul P. O'Brien, Clerk."

VI.

Your petitioner respectfully shows that the United States Circuit Court of Appeals for the Ninth Circuit, in rendering its decision in which it affirmed the decision of the lower Federal Court, on said appeal, made to it as aforesaid, suggested and recommended that the questions of law therein and here involved and raised be presented to and passed upon by the Supreme Court of the United States under a writ of review as hereinafter prayed.

WHEREFORE, your petitioner, J. Frank Hogue, prays that Paul P. O'Brien as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be by this Court required to certify to this Court at a specified time and place a full transcript of the record up to and including said judgment, for review herein, and that thereupon this Court review and annul the same, and that upon said hearing this Court grant your petitioner's petition for a writ of habeas corpus,

and that he be granted his release and freedom from his illegal imprisonment.

Respectfully submitted,

(Signed) J. FRANK HOGUE,
Petitioner.

Sworn and subscribed to before me this day of Feb. 17, 1942.

[SEAL.] MELVIN S. MCKERICKER,
Notary Public in and for the County of Marin, State of California at San Quentin.

My Commission Expires July 9, 1945.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Your petitioner, J. Frank Hogue, respectfully represents to the Court, that he is unlawfully imprisoned in the California State Prison at San Quentin, California, and that he is being illegally and unlawfully held; that he has exhausted his remedies in the State Courts of California, and that there are Federal and Constitutional questions of law involved in his case, and he respectfully urges the Court to grant his petition for writ of certiorari and review his case in order that justice may be done him.

Your petitioner respectfully calls the attention of this Court to the order denying his application for writ of habeas corpus as made by the learned United States District Judge, Judge St. Sure, for the Northern District of California, which is as follows:

> "Upon consideration of the petition for writ of habeas corpus filed herein, it appears that said petition should be denied, and it is so ordered.
>
> The petitioner is confined at San Quentin under state process. Under such circumstances the law is settled that even where a defendant has exhausted his state remedies, the United States District Courts will ordinarily not interfere by habeas corpus, BUT WILL LEAVE HIM TO TAKE HIS CASE DIRECT TO THE UNITED STATES SUPREME COURT.
>
> Mooney *v.* Holohan, 294 U. S. 103;
> Urquhart *v.* Brown, 205 U. S. 179, 181;
> Mooney *v.* Holohan, 7 Fed. Supp. 385, 390;
> Ex parte Jefferson, 106 F. (2) 471.
>
> Dated April 19, 1941.
>
> A. F. St. Sure,
> *United States District Judge.*"

Your petitioner further calls the attention of this Court to the opinion handed down in his case by the United States Circuit Court of Appeals for the Ninth Circuit, upon ap-

peal of his case from the lower Federal Court. Your petitioner feels that in affirming the decree of the lower Federal Court, the United States Circuit Court of Appeals in reality affirmed the petitioner's right to bring his case to this Court.

Your petitioner further shows this Court that in the Brief which was filed in the United States Circuit Court of Appeals for the Ninth Circuit, by the Honorable Earl Warren, and the Honorable David K. Lener, the Attorney General and deputy Attorney General of the State of California, in their concluding remarks and on page 14 of said brief they urged upon that Court as follows:

> "IT IS SUBMITTED THIS COURT (a) WILL NOT EXERCISE ITS DISCRETION AND TAKE JURISDICTION, *BUT WILL LEAVE APPELLANT TO HIS REMEDY IN THE UNITED STATES SUPREME COURT*, he having exhausted it in the State Courts; (b) that in the alternative the appeal is without merit, and that in either of them the order of the United States District Court should be affirmed."

Your petitioner further calls the Court's attention to the fact that the said United States Circuit Court of Appeals in rendering its decision did not deny the petitioner's application for writ of habeas corpus for want of merit, as was suggested to that Court by the Attorney General of California.

WHEREFORE it is respectfully urged that this Court grant his petition for a writ of certiorari, and upon review of his petition for a writ of habeas corpus, that he be granted his freedom as prayed for in his application for writ of habeas corpus.

Respectfully submitted,

(Signed) J. FRANK HOGUE,
Petitioner.

(2)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,
Petitioner,

vs.

CLINTON T. DUFFY, Warden, San Quentin Penitentiary,
Respondent.

BRIEF FOR RESPONDENT

EARL WARREN,
Attorney General of the State of California,

DAVID K. LENER,
Deputy Attorney General of the State of California,
600 State Building,
San Francisco, California,
Attorneys for Respondent.

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In the Supreme Court

OF THE

UNITED STATES

OCTOBER TERM, 1941

No. ------

J. FRANK HOGUE,

Petitioner,

vs.

CLINTON T. DUFFY, Warden, San Quentin Penitentiary,

Respondent.

BRIEF FOR RESPONDENT

This petition on certiorari, directed to the United States Circuit Court of Appeals, Ninth Circuit, is taken from the decree of said appellate court (R. 60, 61), affirming an order of the United States District Court for the Northern District of California, at San Francisco, denying an application for a writ of habeas corpus. (R. 47.)

From the petition of petitioner on habeas corpus, filed in said United States District Court (R. 1-45), it appears that on April 28, 1935, petitioner pleaded guilty to two counts of a written accusation (character undisclosed), each charging a violation of section 288, Penal Code (lewd and lascivious acts upon the body of a child under fourteen years of

age), in the Superior Court of the State of California at Los Angeles; that on said last mentioned date and upon petitioner's plea of guilty to each of said counts, judgment was rendered thereon, by which petitioner was sentenced on each count to the State Prison at San Quentin, California, for the term prescribed by law, said sentences to run concurrently (R. 4, 5); that on the 8th day of October, 1936 the Board of Prison Terms and Paroles fixed the terms of imprisonment of said petitioner on said two counts at twenty years and five years respectively, to run concurrently, (R. 5; Exhibit B, R. 43);

That on the 26th day of October, 1940 petitioner filed a petition for habeas corpus in the Superior Court of the State of California, in and for the County of Marin, which was denied by said court on the 14th day of November, 1940; that a similar petition was filed in the district Court of Appeal of California, which was denied on the 11th day of November, 1940, and that a similar petition for habeas corpus was filed in the Supreme Court of the State of California, which was denied on the 17th day of March, 1941. (R. 2, 3.)

No appeal or other proceeding was taken to this Court from the order of said Supreme Court of the State of California. Having exhausted his remedy in the State courts, he sought relief, as indicated, in said United States District Court

and said Circuit Court of Appeals, by similar judicial process.

Petitioner has been imprisoned in said penitentiary since his commitment by said Superior Court.

The grounds of the petition on habeas corpus filed in said United States District Court are set forth in the opinion of the Circuit Court of Appeals (R. 56-60), to the effect his imprisonment in said penitentiary is in violation of his rights secured by the Fifth and the Fourteenth Amendments to the Constitution of the United States and of Article I, Section 9, Clause 2 thereof.

The order of said United States District Court and the decree of affirmance of said Circuit Court of Appeal are based only upon the proposition that where a petitioner has exhausted his remedy in the State courts on habeas corpus proceedings, the United States District Court and the Circuit Court of Appeal, in the absence of exceptional circumstances will not interfere but will leave petitioner to take his case directly to the United States Supreme Court.

Before considering whether there has been an abuse of the discretion of said Federal courts, let us examine the scope of the inquiry raised by the petition on certiorari filed in this Court.

THE SCOPE OF REVIEW ON CERTIORARI IS LIMITED TO THE SOLE ISSUE RAISED IN THE PETITION AS TO WHETHER SAID UNITED STATES DISTRICT COURT ABUSED ITS DISCRETION IN ITS REFUSAL TO CONSIDER THE MERITS OF THE PETITION ON HABEAS CORPUS

It has been repeatedly held that this Court, sitting as a court of review, will not consider questions which are not raised by the petition on certiorari.

Webster Electric Co. v. *Splitdorf Electric Co.*, 264 U. S. 463, 464;

Alice State Bank et al. v. *Houston Pasture Co.*, 247 U. S. 240, 242.

An examination of the petition herein will show that the sole issue raised is whether the United States District Court abused its discretion in its refusal to hear the petition on habeas corpus on its merits.

THE UNITED STATES DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN ITS REFUSAL TO ASSUME JURISDICTION OF THE HABEAS CORPUS PROCEEDING ON ITS MERITS

In affirming the order or decree of the United States District Court denying the petition of petitioner on habeas corpus, the Circuit Court of Appeals said:

> "In the circumstances, in view of the well settled state of the law in cases such as this, where the state remedies have been exhausted

by the applicant, but he has failed to seek review in the Supreme Court of the United States of the action of the highest court of the state, it would be improper for us to discuss the merits of petitioner's case. Directly in point, and authoritative, is *Palmer* v. *McCauley, Warden,* 9 Cir., 103 F2d 300, 301, where we said that 'the appropriate way to raise questions involving the validity of a commitment under a state law is by application of the state courts, and if denied by appeal to the Supreme Court of the United States.' See also *Urquhart* v. *Brown,* 205 U. S. 179; *Kramer* v. *State of Nevada,* 9 Cir., 122 F2d 417; *Ex parte Jefferson,* 9 Cir., 106 F2d 471; *Ex parte Penney,* 9 Cir., 103 F2d 27; *Ex parte Melendez,* 9 Cir., 98 F2d 791.

Moreover, it is not apparent that this is one of the 'rare cases where exceptional circumstances of peculiar urgency are shown to exist' (*United States ex rel. Kennedy, et al.* v. *Taylor,* 269 U. S. 13, 17), which might possibly justify the issuance of the writ, and we hold there was no abuse of discretion in the denial of it." (R. 59, 60.)

In *In re John Russell Miller,* decided by the Ninth Circuit on March 21st, 1942, a similar situation is presented. There the petitioner applied for successive writs of habeas corpus in the courts of this State, which were in turn denied. No appeal was taken to this Court from the order of the State Supreme Court denying the application. He presented a similar application to the Ninth Circuit Court of Appeals. In denying the application, said

Circuit Court of Appeals, quoting from *Kramer* v. *State of Nevada,* 122 Fed. (2nd) 417, at page 419, said:

> "Moreover, in view of the delicate question of interference by inferior Federal courts with the judgment of the courts of a sovereign state of the Union which is presented by an application such as this, it appears to be the approved practice that if such an application is to be presented after exhaustion of the State judicial remedies, it should be made directly to the Supreme Court of the United States. See *Mooney* v. *Holohan,* supra; *Ex parte Jefferson,* 9 Cir., 106 F. 2d 471, 472; *Ex parte Penney* 9 Cir., 103 F. 2d 27, 28."

See, also

Mooney v. *Holohan,* 294 U. S. 103;
In re Anderson, 117 Fed. (2nd) 939, 940;
Ex parte Jefferson, 106 Fed. (2nd) 471.

IF PETITIONER FELT AGGRIEVED BY THE ACTION OF THE SUPREME COURT OF THE STATE OF CALIFORNIA IN DENYING HIS APPLICATION ON HABEAS CORPUS, HE SHOULD HAVE TAKEN THE MATTER DIRECTLY TO THE UNITED STATES SUPREME COURT

Thus, in *Palmer* v. *McCauley, Warden,* 103 Fed. (2nd) 300, the Court said:

> "We need not go into the merits of the controversy for it is well settled that whether or not a federal court will issue a writ of habeas corpus to release a prisoner held under a commitment from a state court is one of discretion.

Ex parte Royall, 117 U. S. 241, 6 S. Ct. 734, 29 L. Ed. 868; *Ex parte Fonda,* 117 U. S. 516, 6 S. Ct. 848, 29 L. Ed. 994; *Wood* v. *Brush,* 140 U. S. 278, 11 S. Ct. 738, 35 L. Ed. 505. That discretion should be exercised in the light of the principles announced by the Supreme Court in *Urquhart* v. *Brown,* 205 U. S. 179, 27 S. Ct. 459, 51 L. Ed. 760, wherein it is held that the appropriate way to raise questions involving the validity of a commitment under a state law is by application to the state courts, and if denied by appeal to the Supreme Court of the United States. *Ex parte Melendez,* 9 Cir., 1938, 98 F. 2d 791; *Ex parte Penney,* 9 Cir., 103 F. 2d 27, March 24, 1939. There are no exceptional circumstances involved in the instant case which would justify the interposition of the District Court."

See, also

Ex parte Whitacre, 17 Fed. (2nd) 767;
Collins v. *Smith,* 17 Fed. (2nd) 988;
Ex parte Melendez, 98 Fed. (2nd) 791.

This Court cannot entertain the petition on certiorari directed to the Ninth Circuit unless error has been committed in the refusal of the United States District Court to hear petitioner's application for a writ of habeas corpus on its merits. It has already been shown that this was a matter of discretion with said United States District Court and that there has been no abuse of said discretion.

It is submitted that the petition on certiorari contains no merit and that the same should be dismissed.

April 5, 1942.

Respectfully.

EARL WARREN,
Attorney General of the
State of California,

DAVID K. LENER,
Deputy Attorney General of the
State of California,

Attorneys for Respondent.

O

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

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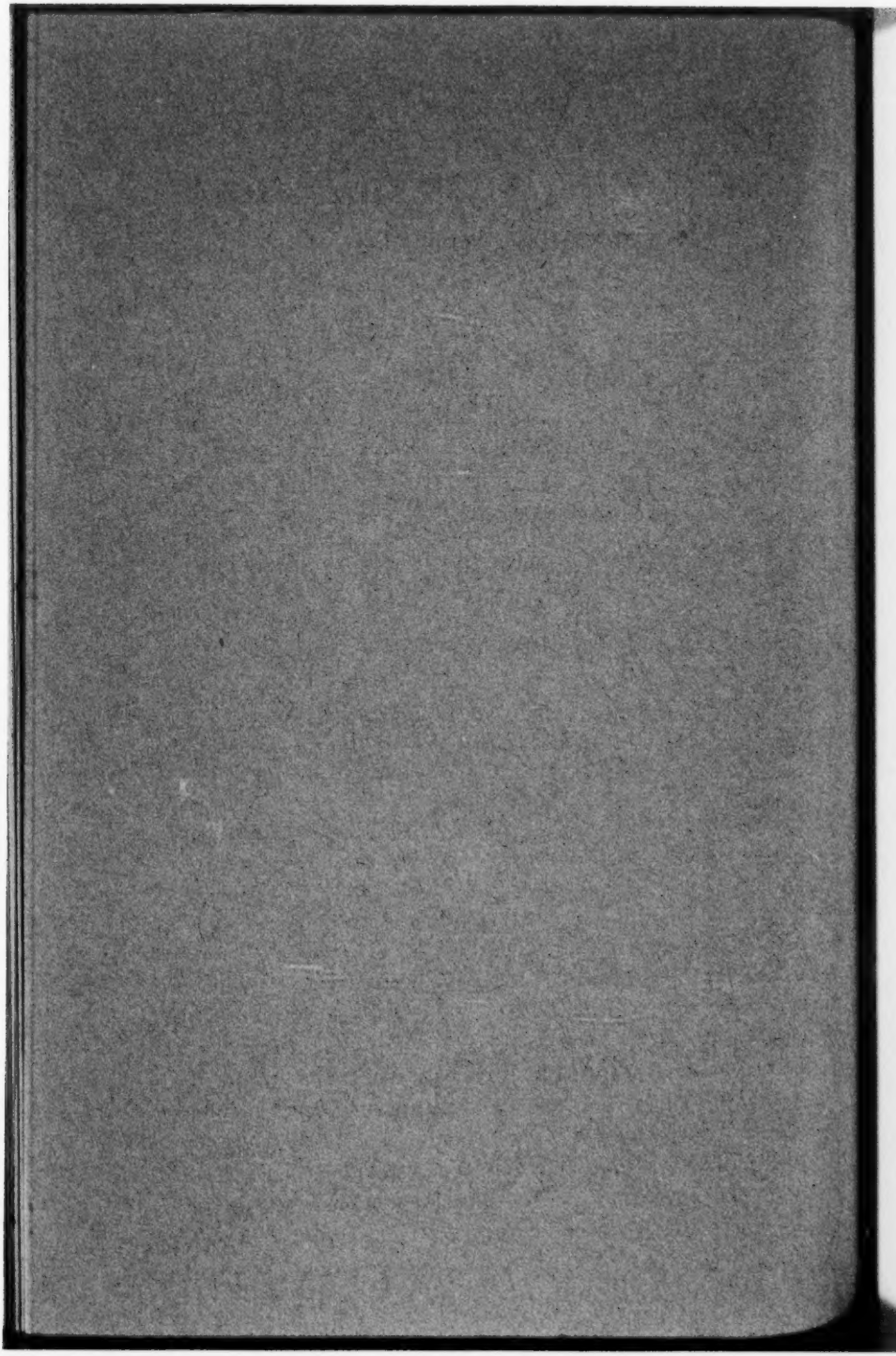
vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONER'S REPLY BRIEF.

J. FRANK HOGUE,
Pro se.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1052

J. FRANK HOGUE,

Petitioner,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PENITENTIARY,

Respondent.

REPLY TO BRIEF FOR RESPONDENT.

"I do solemnly swear (or affirm * * *) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of Attorney General of California according to the best of my ability." Oath of office, Art. XX, Sec. 3, California Constitution. This is the oath of office subscribed to by the Attorney General of California.

The German Nazi and the Japanese Militarist would like to deny the world the right to be heard in Court on pleas of illegal imprisonment.

The petitioner contends that the Attorney General neither during the time that the petitioner's case was before

the State Courts nor afterward inquired into his case of illegal imprisonment, though he filed his protest of such illegal imprisonment, and in each court of the State in succession he was denied his constitutional rights that are set forth in the Bill of Rights, namely the right to be heard in Court, that which the said Attorney General has by oath subscribed to support, to protect, to execute and effectuate, and in spite of the fact that the Attorney General was informed of the effort against the said illegal imprisonment.

The petitioner committed no crime nor violated the law when he directed his case through the Federal District Court and through the Federal Circuit Court of Appeals. It may be a privilege to appeal directly from the State Supreme Court to the United States Supreme Court under such claims, but the petitioner chose the service of the lower Federal Courts there being Constitutional questions involved. He also paid his way and the said Federal Courts accepted the Fees and rendered a decision and that decision is that his relief lay in the United States Supreme Court. The Honorable Attorney General did not raise the question of directing the appeal to the United States Supreme Court direct from the State Supreme Court, but in the Federal Circuit Court of Appeals he did say "leave appellant to his remedy in the United States Supreme Court".

Who is this petitioner but one not skilled in the law,—one who is not financially able to employ a Clarence Darrow, nor any other attorney, but of a class of many referred to in the decision read by Mr. Justice Black in reference to certain Negroes in the State of Florida delivered February 12th, 1940, the class referred to in the following paragraph, and who said:

> "Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak,

outnumbered, or because they are nonconforming victims of prejudice and public excitement."

The Honorable Attorney General is sworn to uphold the Constitution and the Constitution reads directly that the writ of habeas corpus shall not be suspended, that is—abrogated, voided nor nullified, and that the writ of habeas corpus may be applied to any case of claimed illegal imprisonment, that any person claiming illegal imprisonment shall be heard in court by its power of service. To date your petitioner has not been heard in open court by the process of habeas corpus for which he has filed application. Your petitioner does claim with reasons set forth illegal imprisonment, he does claim with law and case citation that he is now suffering illegal imprisonment.

In view of the oath subscribed to by the Honorable Earl Warren on assuming the high office of Attorney General, it occurs to your petitioner that when once appraised of the fact of a claim of illegal imprisonment, that it becomes his SWORN DUTY to look into the allegations and ascertain such facts and urge a hearing of such claims in Court for final disposition, but and instead the said Honorable Attorney General has assumed the attitude of a PROSECUTOR and has successfully prevailed in the Courts in their denying your petitioner his constitutional right to writ of habeas corpus and a hearing of his case in open Court United States Constitutional wise.

Of what use is the Constitution if its provisions are null and void, if it is now meaningless, if it is not respected by "Honorable Men" of the State Courts and States Attorneys? If the said "Honorable Men" willfully and maliciously work adverse to its written provisions in denying hearings in their Courts. What is the difference between these, the said "Honorable Men" and the so-called "Honorable Men" of Japan? What are the American armed forces fighting to protect? Has justice "clean gone" from

the earth? Have the said "Honorable Men" gone mad and refused to look into the claims of one imprisoned when their own laws provide for a hearing? The said law is quoted as follows:

Section 1473 Penal Code of California,

> "Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire the cause of each imprisonment."

Now comes the Honorable Attorney General of California and argues against such complaint and writ of habeas corpus being heard.

The Honorable Attorney General raises the question in opposition to your petitioner being heard in court on the point that he, the petitioner, did not proceed direct to the United States Supreme Court from the California State Supreme Court. It is conceded by the petitioner that the said Honorable Attorney General had nothing else to talk about, for he made no denial of illegal imprisonment, neither has he made any effort to support the constitution in aiding the unfortunate to obtain justice according to the Constitutions thereby protecting the interest of the citizens of the State also.

Why is it so damaging to err in such a minor detail not of absolute necessity, such as carrying suit through two courts extra, and then, why of so little importance if important at all in the mind and contention of the Attorney General, whether a plea of illegal imprisonment is so much as heard in Court when the law in the latter instant is specific and definite and in the first instance is not mandatory but the second the law is mandatory and positive, your petitioner contends, which the more important to preserve the Democracy of the United States, the absolute procedure to the letter when the letter is somewhat elastic, or the ab-

solute written and unmistakable law in regard to the individual rights, the right to be heard in open Court?

That there is now no hope for a fair and impartial hearing of this case in the Courts of California.

Will the Honorable Attorney General Warren in the face of his oath of office deny the petitioner, or any other person imprisoned, the constitutional right to free access to the courts and hearing therein, which is the very thing the petitioner's forefathers fought and suffered to obtain, and is it now stolen, and denied the imprisoned so claiming illegal imprisonment by the so-called "Honorable Men"?

Your petitioner the common of the common people comes and prays that the Brief for Respondent and the argument therein be disregarded and that your petitioner's plea be heard and that he be released from this illegal imprisonment.

April 17, 1942.

Respectfully,

J. Frank Hogue,
Petitioner in propria persona.